

United States Bankruptcy Court
Western District of Oklahoma

In re **Dana Lea Duncan**

Debtor(s)

Case No. **19-14872-JDL**
Chapter **13**

**MOTION TO VACATE ORDER DISMISSING CHAPTER 13 CASE COMBINED WITH
BRIEF IN SUPPORT AND NOTICE OF OPPORTUNITY FOR HEARING**

Comes now the Debtor, Dana Lea Duncan and, through counsel, respectfully moves this court for and order to vacating the order of dismissal of this case. In support of this motion, the Debtor would state as follows:

NOTICE OF OPPORTUNITY FOR HEARING

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document. If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102 no later than 14 days from the date of filing of this request for relief. You should also serve a file-stamped copy of your response or objection to the undersigned movant/movant's attorney [and others who are required to be served] and file a certificate of service with the Court. If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice. The 14 day period includes the three (3) days allowed for mailing provided for in Bankruptcy Rule 9006(f).

FACTS

- 1) This bankruptcy case was filed under Chapter 13 on December 4, 2019, and a plan was confirmed by this Court on January 27, 2020. Pursuant to confirmation, Debtor was ordered to pay 60 monthly payments of \$1290.
- 2) Debtor made 51 timely monthly payments of \$1290 up until the dismissal was ordered.
- 3) On February 5th, 2024, Freedom Mortgage Corp. filed a Notice of Mortgage Payment Change Increasing Debtor's continuing monthly mortgage payment amount from \$832.56 to \$919.29., (an increase of \$86.73).
- 4) Debtor received notice of the Motion to Dismiss for Nonfeasibility from the Trustee.

5) Debtor attempted to contact her attorney to inquire about the legal effect of the Trustee's motion.

However, Debtor's attempts to contact her attorney went unanswered. Debtor formed the mistaken belief that if the \$86.73 increase had been fatal to her reorganization, her attorney would have responded to the problem, would have returned Debtor's calls and would have explained to Debtor what her remedies were.

BRIEF IN SUPPORT OF VACATING DISMISSAL ORDER

This motion is brought pursuant to FRCP § 60(b)(1), which states, in pertinent part:

"Grounds for Relief from a Final Judgment, Order, or Proceeding.
On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excuseable neglect;..."

Up until the dismissal for nonfeasibility occurred, The Debtor completed 51 regular, timely plan payments. Debtor formed the mistaken belief that counsel had taken whatever necessary steps to respond to the dismissal motion. Debtor also formed a mistaken belief that counsel had resolved it and that, had counsel not resolved it, counsel would have answered Debtor's inquiries and explained what Debtor's liabilities and remedies were. Debtor was mistaken in the belief that counsel was administering her bankruptcy case.

CONCLUSION AND PRAYER FOR RELIEF

Debtor has made a good faith attempt to reorganize her financial affairs in accordance with this Court's orders and Bankruptcy Code regulations. Debtor's belief that the matter was being resolved by counsel constituted a reasonable mistake which, therefore, resulted in excuseable neglect.

Debtor's ability or willingness to pay an additional \$86.73 per month was never a problem or issue. Debtor's plan payments were timely. She has tried to fulfill her obligation to creditors in accordance with the this Court's confirmation order.

Therefore, Debtor respectfully prays that the court would regard it as just that the order of dismissal be vacated, that Debtor be given an opportunity to pay her remaining plan payments in accordance with the terms the Court shall deem as just, thus allowing Debtor to complete her Chapter 13 plan within the statutory

time allowed under the code.

Respectfully Submitted this 31st Day of May, 2024 by:

/s/ Alexander Elias Hilton II
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Attorney For Debtor

CERTIFICATE OF SERVICE

I, Alexander Elias Hilton II, hereby certify that on May 31, 2024, a true and correct copy of Motion to Vacate Order Dismissing Case, Brief in Support and Notice of Opportunity for Hearing was served electronically by CM/ECF upon the following interested parties:

U.S. Trustee: Ustpregion20.oc.ecf@usdoj.gov

Chapter 13 Trustee: John T. Hardeman; 13trustee@chp13okc.com, trustee@chp13okc.com

Elaine M. Dowling on behalf of Debtor Dana Lea Duncan; DowlingLawOffice@aol.com,
dowlinglawoffice@yahoo.com; R41424@notify.bestcase.com

Matthew J. Hudspeth on behalf of Creditor RoundPoint Mortgage Servicing Corporation
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bmyers@ecf.courtdrive.com

Daniel A Ross on behalf of Creditor Freedom Mortgage Corporation; dross@hillwallack.com,
drosshw@ecf.courtdrive.com

I, Alexander Elias Hilton II, hereby further certify that on May 31, 2024, a true and correct copy of Motion to Vacate Order Dismissing Case, Brief in Support and Notice of Opportunity for Hearing was served by regular United States mail, First Class, Postage Pre-Paid to the following list interested parties and all creditors listed below:

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